

A. G. Contract No. KR98 0037TRN
ADOT ECS File: JPA 98-02
Project: STP-000-6(119)P
TRACS: SR135 01C
Section: Vulture Mine Road @ BN&SFRR
AAR/DOT No. 025-371-G

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF WICKENBURG

THIS AGREEMENT is entered into 3 June, 1998,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between
the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION
(the "State") and the TOWN OF WICKENBURG, ARIZONA acting by and through its MAYOR
AND TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.

4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
=====

NO. 22399
Filed with the Secretary of State
Date Filed: 06/03/98

Petrey Bayless
Secretary of State

By Vicky Kraemer

5. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows:
Upgrade Railroad Crossing.

Preliminary and Construction Engineering	\$ 2,000.00
Upgrade Existing Roundels from 8" diameter to 12" diameter (by railroad forces)	\$ 2,639.00
Total Project	\$ 4,639.00
Federal Aid Funds @ 94.3% of \$4,639.00	\$ 4,375.00
AZ Corp. Comm. Funds @ 5.7% of \$4,639.00	\$ 264.00
City Funds	\$ 0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the Town's deposit unless and until so authorized in writing by the Town.

2. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the Town shall remove from the Town right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Town right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

5. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The Town shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the Town.

7. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the Town for the benefit of the State in no way acts as a waiver by the Town for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the Town agrees to furnish and provide the State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Wickenburg
Town Manager
Box Box 1415
Wickenburg, AZ 85533-1415

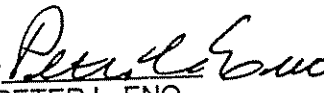
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


TOWN OF WICKENBURG

STATE OF ARIZONA
Department of Transportation

By 
DALLAS C. GANT, JR.
Mayor

By 
PETER L. ENO
Contract Administrator


ATTEST:

By 
~~EDNA GRIEVES~~ LORI BISTODEAU
Town Clerk

RESOLUTION

BE IT RESOLVED on this 6th day of January 1998, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Wickensburg for the purpose of defining responsibilities for constructing railroad crossing improvements on Vulture Mine Road at the BN&SFRR.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in dark ink, appearing to read 'D. Allocchio', is written over a horizontal line.

DAVID ALLOCCHIO, Manager
Engineering Technical Group
for Larry S. Bonine, Director

**MINUTES OF THE REGULAR MEETING
OF THE
COMMON COUNCIL
OF THE
TOWN OF WICKENBURG**

MONDAY, MAY 4, 1998
7:00 P.M.

COUNCIL CHAMBERS
WICKENBURG, ARIZONA

- A. Call To Order: 7:05 P.M. pursuant to Meeting Notice of April 22, 1998.
- B. Pledge Of Allegiance: Councilmember Conly led all present in the pledge to our Flag.
- C. Invocation: Reverend Bob Goldenberg delivered the Invocation.

D. Roll Call

Dallas C. Gant (VACANT)	Mayor	Present
Larry Roberts	Councilmember	Present
Lois Walters	Councilmember	Present
Garth A. Brown	Councilmember	Present
Danny Conly	Councilmember	Present
Valerie Sien	Councilmember	Present
Dave Siegel	Town Manager	Present
Harry Craig	Town Attorney	Present
Lori Bistodeau	Town Clerk	Present

Other Staff Present: Gerald Stricklin, Town Planner; Lyle Shaughnessy, Community Services Director; Tom Candelaria, Finance Director; Tony Melendez, Chief of Police.

Audience Present: Clare Wiltse, Harry Reynolds, Phil Swift, Helen Dudley, John McCardle(sp), M/M Jim Hobbs, Merle and Betty Peck, Julie Brooks, JJ Fletcher, Adrienne Burgoyre, Nathan Brink, Jill Gollike, Pam Hernandez, Lon McDermott, Bill Johnson and Bob Bigler.

- E. Approval Of Minutes
1. Minutes of the Special Meeting of March 31, 1998
 2. Minutes of the Regular Meeting of April 6, 1998
 3. Minutes of the Emergency Executive Session of April 6, 1998
 4. Minutes of Special Joint Executive Session w/Planning Commission of April 10, 1998
 5. Minutes of Special Meeting of April 10, 1998

Following clarifications on questions, COUNCILMEMBER WALTERS MOVED THAT THE ABOVE-CITED COUNCIL MEETING MINUTES BE APPROVED AS PRESENTED. COUNCILMEMBER SIEN SECONDED THE MOTION AND IT PASSED UNANIMOUSLY.

F. Call To Public

Merle Peck, 4559 North Vulture Mine Road, addressed Council and indicated that since the closure of the landfill, an increase in desert dumping has been occurring and asked Council to do what they can to stop this or cite violators. Mayor Gant responded that he would appreciate anyone with knowledge of desert dumping, to let the Town know.

G. Department Head Reports

Town Manager Siegel reported the following:

- May 11, 1998 at 5:30 p.m. is the second Council special budget review meeting;
- The Remuda well is back in operation;
- The Town will be continuing the disposal of green-waste program at the landfill for in-town residents;
- Kevin Shumway's group-home appeal will be on the May 18, 1998, Council agenda.

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(X)

Town Manager Siegel indicated that the Town's obligations under the proposed IGA would be pavement markings and signage. Mr. Siegel recommended approval. In response to Mayor Gant's question, Mr. Siegel responded that the grade of the crossing will remain the same. Following discussion, COUNCILMEMBER SIEN MOVED THAT THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE NORTH VULTURE MINE ROAD RAILROAD CROSSING IMPROVEMENTS, BE APPROVED. COUNCILMEMBER WALTERS SECONDED THE MOTION AND IT PASSED UNANIMOUSLY.

7. Discussion/Action On Approval To Continue Group Enrollment Contract for Intergroup HMO Health Insurance Coverage for Full-Time Town Employees

Discussion ensued on various aspects of this contract including the employees' satisfaction and cost. Mr. Shaughnessy indicated that he has been informed to expect an approximate 7% increase August 1st; also, that the employees with this coverage seem to be satisfied. There was also discussion on the Town's contribution towards employees' families' coverage. Mr. Shaughnessy indicated that for the 99/00 group coverage, the Town will be soliciting proposals/bids.

COUNCILMEMBER CONLY MOVED THAT THE GROUP ENROLLMENT CONTRACT WITH INTERGROUP OF ARIZONA FOR EMPLOYEE HMO HEALTH COVERAGE, BE RENEWED FOR AN ADDITIONAL YEAR. COUNCILMEMBER BROWN SECONDED THE MOTION AND IT PASSED UNANIMOUSLY.

8. Discussion/Action On Award Of Bids For the Sale of Surplus Town Equipment

Town Manager Siegel summarized the bids received for the sale of Town surplus equipment and recommended awarding to the highest bidder and allowing the Town to dispose of equipment not receiving any bids.

COUNCILMEMBER WALTERS MOVED THAT THE BIDS FOR THE SALE OF SURPLUS EQUIPMENT, BE AWARDED TO THE HIGHEST BIDDER FOR EACH ITEM AND THAT STAFF BE AUTHORIZED TO DISPOSE OF ALL EQUIPMENT NOT RECEIVING ANY BIDS. COUNCILMEMBER SIEN SECONDED THE MOTION AND IT PASSED UNANIMOUSLY.

9. Discussion/Action On Legal Opinion Regarding Town's Bidding Requirements And Awarding to the "Lowest Responsible Bidder"

Discussion ensued on the legal opinion provided by Eileen McGuire. Councilmember Sien questioned if the Town has the right to reject a lowest bidder based on past faulty workmanship, etc. Town Attorney Craig indicated that if the Town has retained a consultant/engineer to evaluate bids and make a recommendation based on the bidder meeting specifications and therefore, being responsible or qualified to do the job, the Town has the right to rely upon the consultant's recommendation and the Town would not have liability. However, if there is no consultant or other professional and unless there is evidence that the lowest bidder is not responsible based on a policy the Town has in place, the Town should award to the lowest bidder. Mr. Siegel then outlined the past evaluation procedure used by Staff in recommending various consultants. Ms. Sien questioned upon what basis we would not award to the lowest bidder. Mr. Craig indicated if they did not provide the required bid bond, inadequate staffing, poor references, lack of equipment, etc.

IT WAS COUNCIL'S CONSENSUS TO SCHEDULE A FUTURE AGENDA ITEM TO ESTABLISH A POLICY ON AWARDED TO THE LOWEST RESPONSIBLE BIDDER AND IN CONNECTION THEREWITH, DEFINE "RESPONSIBLE" BIDDER. Mr. Siegel indicated he would schedule this in mid- to late-summer.

10. Discussion/Action On Town's Intent to Increase Impact Fees And Accept & Release To Public, The Study Containing Information Supporting the Fee Increase And Set Date For Public Hearing

Councilmember Sien stated that she thought the study had been released to the public at the last meeting. Town Planner Stricklin responded that it was; however, not in accordance with

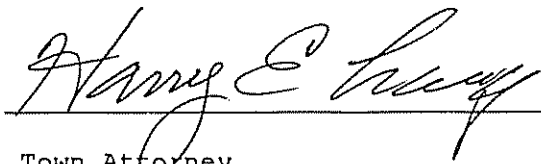
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JPA 98-02

APPROVAL OF THE WICKENBURG TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF WICKENBURG and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 14th day of MAY, ~~1997~~. 1998



Town Attorney



GRANT WOODS
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR98-0037TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE May 26, 1998.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/12630

Enc.